

Embassy Liquor, Inc. and Wine, Liquor and Distillery Workers Union Local One. Cases 2-CA-25585 and 2-CA-25988

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon charges filed by Wine, Liquor and Distillery Workers Union Local One (the Union) on February 14 and September 3, 1992, the General Counsel on March 31, 1993, issued an order revoking settlement agreement in Case 2-CA-25585, consolidating cases and issuing consolidated complaint and notice of hearing against Embassy Liquor, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges and consolidated complaint, the Respondent failed to file an answer.

On May 27, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On June 2, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated April 22, 1993, notified the Respondent that unless an answer was received by close of business on May 10, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, the Respondent, a domestic corporation, with an office and place of business in New York, New York, has been engaged in the retail sale of wines and liquors. Annually, in the course and conduct of its business operations, the Respondent derives gross revenues in excess of \$500,000 and purchases and receives at its facility products, goods, and

materials valued in excess of \$5000 from other enterprises located within the State of New York, each of which other enterprises receives said products, goods, and materials directly from points outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Metropolitan Package Store Association, Inc. (the Association) has been an organization composed of employers engaged in the operations of liquor stores, and which exists for the purpose, inter alia, of representing its employer-members in negotiating collective-bargaining agreements with the Union.

At all material times, from at least January 1, 1989, through December 31, 1991, the Respondent has been an employer-member of the Association and has authorized the Association to represent it in negotiating collective-bargaining agreements.

At all material times, the following employees of the Respondent (the unit) have constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees, excluding managerial persons, guards and supervisors as defined in the Act.

Since at least 1989, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since said date, the Union has been recognized as such representative by the employer-members of the Association, including the Respondent. Such recognition was embodied in a collective-bargaining agreement, effective by its terms for the period January 1, 1989, through December 31, 1991.

At all material times, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

The 1989-1991 collective-bargaining agreement contains, at articles XII and XIII, provisions requiring weekly contributions to the insurance and pension funds (the funds) to be remitted by the Respondent on behalf of its employees.

Since January 1, 1992, except for the payments which consist of four fund payments totaling \$1660, all of which were made after the signing of the settlement agreement in Case 2-CA-25585, the Respondent has failed and refused, and continues to fail and refuse, to make fund payments.

Although the subjects set forth above related to wages, hours, and other terms and conditions of employment and are mandatory subjects for the purposes of collective bargaining, the Respondent engaged in the conduct described above unilaterally without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct.

On or about July 2, 1992, the Respondent and the Union commenced collective-bargaining negotiations in an effort to agree to the terms of a successor collective-bargaining agreement to succeed the 1989-1991 agreement.

On several occasions subsequent to July 2, 1992, the Union requested that the Respondent meet and bargain further for a successor collective-bargaining agreement.

Since the meeting described above, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of its employees in the unit.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has unlawfully failed and refused since January 1, 1992, except for the payments which consist of four fund payments totaling \$1660, to make weekly contributions to the funds on behalf of unit employees as required by articles XII and XIII of the 1989-1991 collective-bargaining agreement, we shall order the Respondent to make such weekly contributions and to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd., 444 F.2d 502 (6th Cir. 1971), with interest as pre-

scribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Finally, having found that the Respondent has also unlawfully failed and refused to meet and bargain with the Union since July 2, 1992, over a successor collective-bargaining agreement, we shall order the Respondent to bargain with the Union on request.

ORDER

The National Labor Relations Board orders that the Respondent, Embassy Liquor, Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to make weekly contributions to the funds on behalf of employees in the unit described below as required by articles XII and XIII of the 1989-1991 collective-bargaining agreement:

All full-time and regular part-time employees, excluding managerial persons, guards and supervisors as defined in the Act.

(b) Failing and refusing to meet and bargain with Wine, Liquor and Distillery Workers Union Local One over a successor agreement to succeed the 1989-1991 collective-bargaining agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make weekly contributions to the funds on behalf of unit employees as required by articles XII and XIII of the 1989-1991 collective-bargaining agreement.

(b) Make whole the unit employees for any loss of benefits or other expenses suffered as a result of its failure to abide by the terms of the 1989-1991 collective-bargaining agreement, as set forth in the remedy section of this decision.

(c) On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Yonkers, New York, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. June 28, 1993

James M. Stephens,	Chairman
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Dennis M. Devaney,	Member
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John Neil Raudabaugh,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to make weekly contributions to the insurance and pension funds on behalf of our employees in the unit described below as required by articles XII and XIII of the 1989-1991 collective-bargaining agreement:

All full-time and regular part-time employees, excluding managerial persons, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to meet and bargain with Wine, Liquor and Distillery Workers Union Local One over a successor agreement to succeed the 1989-1991 collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make the weekly contributions to the funds on behalf of unit employees as required by articles XII and XIII of the 1989-1991 collective-bargaining agreement.

WE WILL make whole the unit employees for any loss of benefits or other expenses suffered as a result of our failure to abide by the terms of the 1989-1991 collective-bargaining agreement.

WE WILL, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment.

EMBASSY LIQUOR, INC.